

**State Board of Forestry and Fire Protection**

**Findings Pursuant to Government Code Section 11346.1(b) in Support of  
Adoption of Emergency Rules to Implement  
AB 2420 Forest Fire Prevention Exemption**

**Notice Date: December 29, 2004**

The California State Board of Forestry and Fire Protection (Board) is promulgating an emergency regulation necessary to implement a legislative amendment PRC 4584 (k) authorized under Assembly Bill (AB) 2420, known as the Forest Fire Protection Act of 2004. This legislation authorized the Board of Forestry and Fire Protection (BOF) to create a Forest Fire Prevention Exemption which would exempt from the requirements of the Forest Practice Act (FPA) the harvesting of trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns. It was signed into law by the Governor on September 23, 2004.

Comments on this emergency regulation may be submitted by mail and should be addressed to

Board of Forestry and Fire Protection

Attn: Christopher Zimny

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and mailed, fax or courier to:

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Sacramento, CA 95814

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Written comments can also be hand couriered or delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be sent via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

**Comments must be received by 5:00 PM, January 7, 2005.** It is requested, but not required, that written statements or arguments be submitted in triplicate.

## **I. Finding of Emergency**

**The Legislature finds and declares wildfire conditions are a threat to resources and the overall public health and safety of California.** Past disruptions of natural fire cycles and other activities have resulted in wildfires of increasing intensity and severity that are a threat to the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California. Additionally, healthy forests are a common goal for Californians, but overstocked forests cause increased tree mortality resulting in the build up of flammable fuels. The treatment of these hazardous fuels will reduce the impact of wildfires on communities, natural and cultural resources, and will restore health to fire-adapted ecosystems.

**The State Board of Forestry and Fire Protection (Board) recognizes the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity and arrangement of natural vegetation.** This wildfire

hazard is a significant threat to human and natural resources on over 48 million of the State's 81 million acres of forests and rangelands. The imminent emergency nature of the fuel hazard problem has also been repeatedly recognized by many high profile efforts including the Governor's Blue Ribbon Fire Commission of 2004, U.S. General Accounting Office report on western National Forest fire conditions, the Western Governors' Association promulgation of the National Fire Plan, the USDA Forest Service (USFS) Sierra Nevada Forest Plan Amendment, 2004, and legislation proposed by the California State Assembly.

**The Board finds modern fire frequency is much longer (in most areas) than prior to European settlement, with much of California's wildlands able to support intense catastrophic wildfires.** Past disruptions of natural fire cycles and other activities have resulted in wildfires of increasing intensity and severity that are a threat to the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California. Much of the forests and rangelands have fuel and slope conditions that would support high or very high fire behavior when burned under severe weather conditions. Fires that burn in these areas under hot, dry, and windy conditions are difficult to control even by the world's most comprehensive wildland fire protection system.

**The Board finds fire hazard, the combination of terrain, fuel type and fuel condition, is steadily becoming more hazardous on timberlands.** Healthy forests are a common goal for Californians, but overstocked forests cause increased tree mortality resulting in the build up of flammable fuels. Recent measurements by the USFS Forest Inventory and Analysis Program (FIA) indicate increasing level of stocking on private lands over the last three decades, with million of acres of coniferous forest types having stand densities far beyond stocking levels associated with the site capacity. This suggests that stands are very susceptible to significant levels of pest mortality and increased dead fuel loads. When combined with on-going drought and atmospheric zone damage, these conditions can lead to catastrophic wildfire events. The treatment of these hazardous fuels reduces the impact of wildfires on communities, natural and cultural resources, and restores health to fire-adapted ecosystems.

**The Board finds the values at stake in wildland fire protection are extensive and at imminent threat.** The Board finds that over 5.4 million acres of all vegetation types in the wildland urban interface have significant fire threat with over 4.9 million housing units exposed to High, Very High or Extreme Fire Threat as defined by the California Department of Forest and Fire Protection's Fire and Resource Assessment Program. Natural resources are also at risk. Nearly 17 million acres of diverse ecosystems ranging from pine forests in the Klamath/North Coast region to coastal sage scrub communities along the South Coast have high fire threat, where substantial damage to ecological values such as habitat, water quality and quantity, and carbon sequestration could occur following fires.

**The combination of fuel, weather and valuable human and natural resource assets have created an increasing amount of wildfire and increasing losses.** Major wildland fires in California, epitomized by the extraordinary fires of October, 2003, threaten a wide range of public and private assets. In 2003, wildfires destroyed more than 730,000 acres, 3,600 residential structures, and resulted in the tragic loss of 25 lives in California. The southern California wildfires were followed by mudslides that tragically killed 14 people. The subsequent mudslides possibly resulted from vegetation lost to wildfire and flash flooding.

Recent five year average shows over 500,000 acres per year were burned, and as seen recently in 2003, this annual total varies greatly with over 700 thousand acres burned in some years. While the area burned in wildfires varies greatly year to year, when viewed statewide, there has been an apparent increase in high fire years (total area burned greater than 500,000 acres) since 1985.

While the acreage and number of wildfires each is extensive and increasing on a statewide basis, a more significant trend is the climbing wildfire-related financial losses. From 1947 to 1990, the dollar damages to structures and other resources in State Responsibility Areas (SRA) exceeded \$100 million (2001 dollars) only once. Between 1990 and 2001, losses exceeded \$100 million five times.

**Based on the above findings and in conjunction with the legislative intent and findings in 4584 (k) as amended in AB 2420, the Board finds there is an emergency situation present with action needed for immediate preservation of the public peace, health and safety, and the general welfare.**

**The Board finds the proposed regulation, which treats surface, ladder and, to lesser extent crowns of trees, is necessary for reduction of fire hazard needed for immediate preservation of the public peace, health and safety, and the general welfare.** The treatments required by AB 2420 including reducing tree crowns to no less than 40-60 percent crown closure, increasing height to live crown base distance to greater than eight feet, reduction of surface fuel to meet a four foot flame length fire behavior objective, and limited removal of trees less than 18 to 24 inches stump diameter with prioritization on removal of smaller trees contribute to meeting fuel hazard reduction goals.

## **II. Authority and Reference**

Authority: AB 2420 amending PRC 4584 (k) authorizes the Board to exempt the forest practices described in the proposed regulation for forest fire prevention purposes.

Reference: PRC 4551 authorizes the Board to adopt rules and regulation as it determines are reasonably necessary to enable, implement, interpret or make specific PRC 4592.

## **III. Informative Digest/policy statement**

The Board and the enabling legislation of this regulation recognizes the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity and arrangement of natural vegetation. This regulation would authorize the Board of Forestry and Fire Protection (BOF) to create a Forest Fire Prevention Exemption which would exempt from the requirements of the Forest Practice Act (FPA) the harvesting of trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns. AB 2420 was signed into law by the Governor on September 23, 2004.

Substantive requirements and limitations of the proposed regulation include:

- Maximum project area of 300 acres per exemption.
- A Registered Professional Forester must prepare the exemption notice, describe the pre and post harvest forest conditions, be involved in the designation of harvest trees, consult with timber operations conducting the logging, and prepare archaeological assessments.
- Post harvest conditions shall have larger average tree diameters than pre harvest conditions, meet minimum stocking requirements and have minimum canopy closures (50% to 60 %).
- Limit tree harvest to a maximum 18 inches stump diameter except 500 feet from structures where harvest is a maximum 24 inches stump diameter when justified.
- Ladder fuels treated to create 8 foot separation between live trees crown and surface fuels.
- Surface fuels, including existing live and dead vegetation and slash created during harvesting operations, treated to achieve a goal of four foot flame lengths when burned under severe fire weather conditions.
- The Department of Forestry and Fire Protection (CDF) to conduct an on-site inspection after timber operations are completed.
- The exemption would sunset on January 1, 2008.

The general scope of the rule is private timberlands with hazardous fuel conditions, permitted structures within and outside of the community areas, and approved fire suppression ridges. The primary target groups are small timberland owners, who often have the least means and capability to complete fuel reduction projects.

#### **IV. Statement of Necessity and Specific Purpose**

##### **Necessity**

The fundamental necessity for this regulation is to implement a legislative amendment PRC 4584 (k) authorized under Assembly Bill (AB) 2420. This legislation was an urgency statute and was declared to take effect immediately. This urgency statute implies the regulation should also be implemented on a more immediate basis and ensure the regulation is in place for the next operable field period when fuel hazard projects can occur. In light of the Board of

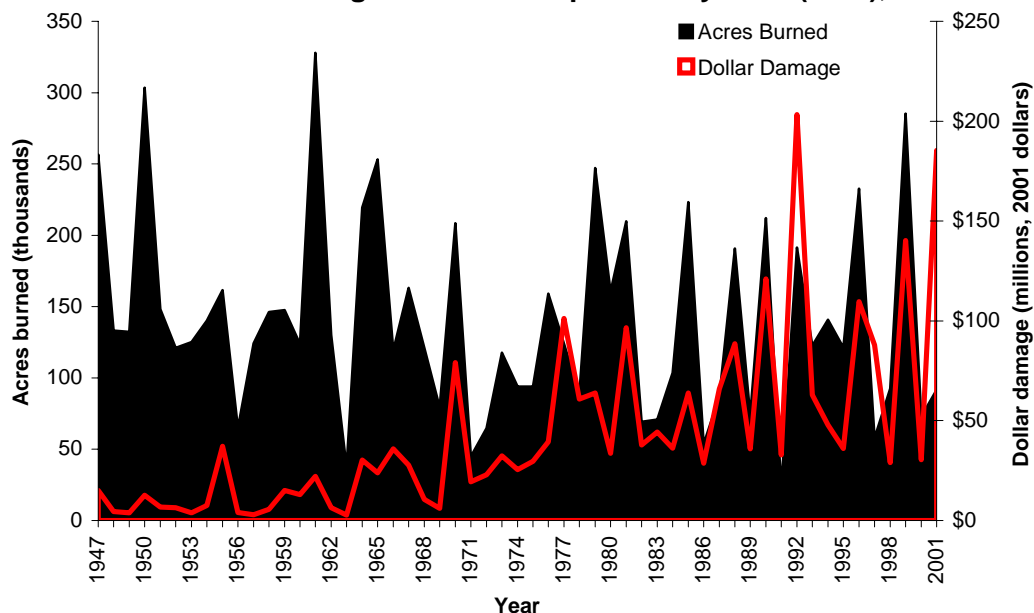
Forestry and Fire Protection's statutory limitations for permitting regulation to become effective only on January 1<sup>st</sup> of each year (see PRC 4554.5 Rules and regulations; effective dates), adoption of this legislation as an emergency regulation is necessary to ensure the regulation is in effect for the Fall 2004 and entire 2005 fire seasons.

In recent years, the public has become deeply concern about the potential for severe forest wildfire. Of particular concern are the wildfires in the Wildland Urban Interface areas where homes and development intermix with the wildland vegetation (Carey and Shumman, 2003). Conversely, forest managers are concerned about the spread of fire from these residential areas into wildland areas and the impacts they have on natural resources and ecological system such as habitats, water cycling and carbon sequestration. While modern fire frequency is much lower in most areas than prior to European settlement, much of California's wildlands support conditions of high or very high potential fire behavior if fires are not aggressively suppressed. Much of the forests and rangelands have fuel and slope conditions that would support high or very high fire behavior when burned under typical severe weather conditions. Fires that burn in these areas under hot, dry, and windy conditions are difficult to control even by the world's most comprehensive wildland fire protection system.

The combination of fuel, weather and valuable human and natural resource assets have created in increasing amount of wildfire and increasing losses. Major wildland fires in California, epitomized by the extraordinary fires of October 2003, threaten a wide range of public and private assets. These include watershed values, such as water quality, habitat, water supply and power generation, life and property, wildlife habitat, air quality and important infrastructure. Each year on average over 250,000 acres of forest and rangeland of all ownership is affected by wildfire. Recent five year average shows over 500,000 acres were burned, and as seen recently in 2003, this annual total varies greatly with over 1 million acres were burned. Areas burned in wildfires vary greatly year to year, with climate driving much of the variability. When viewed statewide, the temporal variation masks any possible trends in total acreage, although there has been an apparent increase in high fire years (total area burned greater than 500,000 acres) since 1985.

While the acreage and number of wildfires each is extensive and increasing, (approximately 10,000 wildfires burn half a million acres on an annual basis in California), the number of acres burned fluctuates considerably. A more significant trend is the climbing wildfire-related financial losses. From 1947 to 1990, the dollar damages to structures and other resources in State Responsibility Areas (SRA) exceeded \$100 million only once. Between 1990 and 2001, losses exceeded \$100 million five times (see figure).

**Wildfire acres and dollar damage on State Responsibility Area (SRA), 1947-2001**



The Legislature as further found this regulation is necessary for capturing funding opportunities to reduce fire hazard as follows:

- Under the National Fire Plan, promulgated by the Western Governor's conference, the hazardous fuel treatment program has expanded significantly, with a greater focus on treatments intended to protect communities in the wildland urban interface.
- Federal funding is currently available, pursuant to the bipartisan passage of Public Law 108-148, for the reduction of hazardous fuels from unhealthy forests near communities determined to be at risk from catastrophic wildfires.



- To better coordinate with and garner federal funding, California needs to expedite projects to increase safety for the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California, by reducing fire risks where ecosystem and public safety risks are excessive.

### **Specific Purpose**

The specific purpose of the proposed rule is to address the hazardous wildfire situation on private timberlands by providing regulatory relief for expedited fuel hazard reduction of live and dead fuels. This relief is created by allowing the filing of a Notice of instead of a Timber Harvest Plan. Section 1038 (i) states the intent of the regulation to eliminate the vertical and horizontal continuity of hazardous fuels. Section (i)(1) limits the minimum size of any one exemption to less than 300 acres in size.

### **V. Disclosures Regarding the Proposed Action**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: Because a willful violation of the exemption requirements would be a crime, the bill would impose a state mandated local program. The fiscal impact on local agencies for enforcement and protection would be minimal due to CDF's preemption of Forest Practice Rules enforcement in combination with the Environmental Protection Project, California District Attorney's Association, and the civil penalty authority afforded by PRC 4601.2.
- Costs or savings to any State agency: The regulation will result in unknown annual net General Fund costs or savings over the next three years. General Fund costs will result from increased costs for completion inspections to the extent that landowners who would otherwise file for a 150 foot fuels reduction exemption will instead file for an exemption authorized by this regulation. This is because CDF is not required to conduct an on-site post-harvest inspection for harvesting under the 150 foot exemption, but would be required to conduct an on-site post-harvest inspection under this regulation. Given CDF receives 1,000 to 1,400 exemption requests annually under the 150 foot fuels reduction exemption

and some unknown portion of those exemption would switch to exemptions filed under this regulation, the fiscal impact related to the mandatory on-site post harvest inspection required by CDF is estimated to cause an increase in .5 to 1.0 person years of department staff.

Conversely, the regulation could result in General Fund savings to the extent that landowners who would otherwise file a Timber Harvest Plan (THP) will instead file for an exemption under this regulation. The THP review process is a costly process in which CDF, along with representatives from the Regional Water Quality Control Boards, the Department of Conservation, and the Department of Fish and Game review the THP, often conduct on-site inspections prior to harvest, and collect and respond to public comments. CDF also conducts an on-site post-harvest inspection for harvesting that occurs under a THP. A single THP review can result in General Fund costs ranging from \$30,000 to \$40,000 for harvesting under a THP. To the extent that the regulation causes landowners to file for an exemption under this regulation in place of filing a THP, the regulation would result in General Fund savings. The net impact of the regulation on inspection workload depends on the actions of the landowners and accordingly is extremely difficult to estimate.

The regulation also could result in unknown, potentially significant, General Fund cost avoidance by reducing forest fire risk and making it easier for CDF to contain fires while they are small; thereby preventing large conflagrations. CDF annually spends more than \$400 million from the General Fund on fire protection and suppression.

- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC §17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not have an adverse affect on small business. The proposed regulation is designed to provide regulatory relief, leading to substantial reduction in regulatory filing and preparation fees.
- The proposed rules do not conflict with, or duplicate Federal regulations.